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non-commercial use. Where this requirement is waived due to national emergency or other circumstances of extreme urgency, the owner of the patent shall be notified as soon as reasonably practicable. Where this requirement is waived for a public non-commercial use, the owner of the patent shall be notified promptly.

[46 FR 39581, Aug. 4, 1981, as amended at 58 FR 68734, Dec. 29, 1993]

§ 780.46 Communication of decision to General Counsel.

When the Board decides to issue a patent license under section 153c of the Act, the Board shall send the decision to the General Counsel and instruct the General Counsel to issue the license on terms deemed equitable by the Department and generally not less fair than those granted by the patentee or by the Department to similar licensees for comparable use.

§ 780.47 Conditions and issuance of license.

(a) Upon receipt of the Board's decision and instruction to issue a patent license, the General Counsel shall issue a license which complies with the following:

(1) The scope and durations of such use shall be limited to the purpose for which it was authorized;

(2) Such use shall be non-exclusive;

(3) Such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;

(4) Any such use shall be authorized predominantly for the supply of the U.S. market; and,

(5) Authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur.

(b) The Board shall have the authority to review, on motivated request, the continued existence of these circumstances. The parties will propose and agree on a reasonable royalty fee within a reasonable time as determined by the General Counsel. A reasonable royalty shall provide adequate remuneration for the circumstances of each case, taking into account the economic

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value of the authorization. If a party does not agree with the terms and conditions of the license as determined by the General Counsel or if a royalty fee cannot be agreed upon within the reasonable time period established by the General Counsel, any party may, within 30 days after the expiration of such time period, initiate a proceeding before the Board, in accordance with subpart E of this part, for a reconsideration of the General Counsel's determination. After the proceeding under subpart E of this part is completed, the General Counsel shall modify the patent license in accordance with the Board's determination.

[46 FR 39581, Aug. 4, 1981, as amended at 58 FR 68734, Dec. 29, 1993]

Subpart E—Application for Royalties and Awards Under Section 157 of the Atomic Energy Act of 1954 and Compensation Under Section 173 of the Atomic Energy Act of 1954 and the Invention Secrecy Act (35 U.S.C. 183)

§ 780.50 Applicants.

(a) Any owner or licensee of a patent licensed under section 158 or subsections b or e of section 153 of the Act may file an application with the Board for the determination of a reasonable royalty fee.

(b) Any owner or licensee of a patent licensed under subsections b or e of section 153 of the Act may file an application with the Board for the modification of any terms and conditions of the license.

(c) Any person who has made an invention or discovery useful in the production or utilization of special nuclear material or atomic energy, has complied with the provisions of section 151c, but, under the Act, is not entitled to a royalty for such invention or discovery, may file an application for an award.

(d) Any owner of a patent application that contains restricted data not belonging to the United States which the Department has communicated to any foreign nation may make application for just compensation pursuant to section 173 of the Act.

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(e) Any patent applicant, whose patent is withheld because of a secrecy order issued at the request of the Department may, beginning at the date the patent applicant is notified that, except for such order, the application is otherwise in condition for allowance, apply for compensation for the damage caused by the secrecy order and/or for the use of the invention by the Government, resulting from any disclosure to the Department required by the Invention Secrecy Act.

§ 780.51 Form and content.

(a) Each application shall contain a statement of the applicant's interest in the patent, patent application, invention or discovery and identify any other claimants of whom the applicant has knowledge.

(b) Each application must contain a concise statement of all of the essential facts upon which it is based. No particular form of statement is required, but it will facilitate consideration of the application if the following specific data accompany the application:

(1) In the case of an issued patent, a copy of the patent.

(2) In the case of a patent application, a copy of the application and of all Patent and Trademark Office actions and responses thereto.

(3) In the case of an invention or discovery as to which a report has been filed with the Department pursuant to subsection c of section 151 of the Act, a copy of such report.

(4) In the case of an award, the date relied upon as the date of invention.

(5) In all cases, a statement of the extent to which the invention or discovery was developed through federally financed research or with other Federal support.

(6) In all cases, the degree of the utility, novelty, and importance of the invention or discovery.

(7) In all cases, a statement of the actual use by the Federal Government or others of such invention or discovery, to the extent known to the applicant.

(8) In all cases, the cost of developing the invention or discovery and acquiring the patent or patent application.

(9) The royalty fee proposed, the proposed terms and conditions of a license

agreement, or the amount sought as compensation or award, as well as the basis used in calculating such fee, compensation or award and whether a lump sum or periodic payments are sought.

(10) In an application for just compensation pursuant to section 173 of the Act, the ownership of the invention that is the subject matter of the patent application at the time the Department communicated the restricted data shall be set forth, and any restricted data contained in the application shall be specifically identified.

(11) In an application for compensation under the authority provided in the Invention Secrecy Act (35 U.S.C. 183), for the damage caused by imposition of a secrecy order on a patent application and/or for the use of the invention by the Government, the date of the secrecy order, the date of the notice that the patent application is in condition for allowance, and, if known to the applicant, the date of the first use of the invention by the Government.

§ 780.52 Notice and hearing.

The Board shall, in its discretion, afford the applicable party an opportunity for a hearing for the presentation of relevant evidence. Thirty (30) days notice shall be given of the time and place of such hearing. After expiration of the notice period, the Board shall proceed with a hearing and render its decision.

§ 780.53 Criteria for decisions for royalties, awards and compensation.

(a) In deciding a reasonable royalty fee for a patent licensed under section 158 or sections 153b or 153e of the Act, the Board shall consider:

(1) The economic value of the compulsory license and the Board shall strive to provide adequate remuneration for the circumstances of each case.

(2) Any defense, general or special, that a defendant could plead in an action for infringement;

(3) The extent to which such patent was developed through federally financed research or with other Federal support;

(4) The degree of utility, novelty, and importance of the invention or discovery; and